

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

|                      |
|----------------------|
| USDC SDNY            |
| DOCUMENT             |
| ELECTRONICALLY FILED |
| DOC #:               |
| DATE FILED: 3/8/13   |

-----X

DAVID DELAROSA,

Petitioner,

11 Civ. 8714 (RWS)

- against -

OPINION

UNITED STATES OF AMERICA

-----X

**Sweet, D.J.**

Petitioner David Delarosa (the "Petitioner" or "Delarosa") filed a petition seeking habeas corpus relief pursuant to 28 U.S.C. § 2255 (the "Petition"). On October 3, 2012, the Petition was denied. (Dkt. No. 6).

Petitioner submitted his request for a certificate of appealability ("COA") to the United States Court of Appeals for the Second Circuit, dated December 4, 2012. (Dkt. No. 7).

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2). Section 2253(c)(1) of Title 28 of the United States Code provides, in pertinent part, that:

[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from -

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.

28 U.S.C. § 2253 (c) (1) .

After reviewing the relevant portions of the file, and for the reasons set forth in this Court's October 3, 2012 opinion, the Court finds that the Petitioner has failed to make a substantial showing of the denial of a constitutional right. Therefore, the Court denies his request for a COA. See Lozada v. United States, 107 F.3d 1011 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997).

It is so ordered.

New York, NY  
March 7, 2013



ROBERT W. SWEET  
U.S.D.J.